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Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

October Term, 1993

CONSTANTINE STASSIS,

*Petitioner,*

vs.

LILLITH JOY HARTMAN AND
RHEA ROBIN HARTMAN, MINORS,
BY THEIR NEXT FRIEND
JANET HARTMAN,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Iowa is the only State in the United States of America in which the paternity statutes allow the Petitioners – all women, but not the Respondents – all men, to exercise freely their statutory right to a trial by jury. Does not this gender-based discrimination violate the Respondent's constitutional right to equal protection under the laws?

2. Whether the State's paternity statutes as modified by the Legislature and the Courts violate the Respondent's constitutional right to due process of law.

3. Whether the State of Iowa, by forcing men who are certain that they are not the fathers, to support the children of women, but not requiring from these women to work to support their children, even if they are capable and highly qualified to be gainfully employed, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution by discriminating on the basis of gender.

4. Whether the Courts of Iowa, by extending the applicability of the paternity statute to lesbian couples with established family units and thus offering incentives to a group of citizens, all women, with protected procreational and parental rights to violate by fraudulent means these same rights of another group of citizens, all men, is in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

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## OPINION BELOW

The opinion of the Iowa Court of Appeals dated May 25, 1993 appears at App. 1-12. The opinion is not published. On July 30, 1993 the Iowa Supreme Court denied Stassis' Petition for Further Appeal (App. 13). The Trial Court filed its Findings, Conclusions and Decree on July 31, 1991 (App. 20-39).

## JURISDICTION

The Iowa Court of Appeals filed its opinion on May 25, 1993. (App. 1). On July 30, 1993, the Iowa Supreme Court denied a Petition for Further Review (App. 13). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(a). Certiorari review is appropriate because the Iowa Court of last resort decided a question of gender-based discrimination which violated Stassis' right to Equal Protection under the Fourteenth Amendment in a way that conflicts with the decision of all the other State Courts. Further, the decision of the Iowa Court decided important questions of federal law which have not been, but should be settled by this Court, and decided federal questions in a way that conflicts with the applicable decisions of this Court.

## CONSTITUTIONAL AND STATUTORY PROVISION

The Fourteenth Amendment to the United States Constitution provides in relevant part:

1. . . . No state shall . . . deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Chapter 675 – Paternity of Children and Obligation for Support – Code of Iowa 1991 (App. 48-50).

3. Chapter 252A – Uniform Support of Dependents Law – Code of Iowa 1991 (App. 50-53).

## STATEMENT OF THE CASE

The facts and circumstances of this case raise issues that are unprecedented, but which, in a rapidly changing society, will continue to occur.

The Petitioner, Constantine Stassis [hereinafter referred to as Stassis], is a Professor of Physics at Iowa State University. He was declared by the Iowa Courts to be the father of two children presently 12 and 8 years old, respectively, that are being raised in a lesbian household established by the mother Janet Hartman and her lover Susan Jellinger long before Stassis was even acquainted with the mother. Janet Hartman and Susan Jellinger own jointly a house, live together, share expenses, and raise the children as if they had "two mothers." Stassis was never told that he may be the father nor was he asked to pay for child support until July 1989, when the mother filed a paternity suit, eight years and four years, after the birth of the first and second child, respectively.

Stassis, upon being sued, filed an answer and a timely demand for jury trial. The Trial Court on September 27, 1990 ruled that Stassis was not entitled to a jury trial (App. 40). Stassis filed an application seeking permission of the Iowa Supreme Court for an Interlocutory Appeal from the pretrial ruling denying his demand for a jury trial. On the 13th day of November 1990, the Supreme Court of Iowa denied an Interlocutory Appeal (App. 18).

Stassis denies that he is the father of either of these children. In fact, Janet Hartman used a pool of unsuspecting men as involuntary "sperm donors" so that the father is unknown in order to raise the children with Susan Jellinger without interference from any man. The fathers were listed as unknown on the birth certificates and in a series of other official documents. Both Janet Hartman and Susan Jellinger have University degrees and although they could support the children on one salary, Janet Hartman, who abandoned her job after giving birth to the first child, received welfare support from the State for more than ten years. In her applications for ADC support, and all other documents filed with the Department of Human Services, she listed the fathers as unknown. In open court, on the other hand, she claimed she knew who the father was and that she intentionally defrauded the State. She refused to produce her medical records for the period covering the conception of the second child, since Stassis' travel vouchers proved he was out of the state. She lied shamelessly in her written responses to her interrogatories and her deposition. Even the trial judge that ruled in her favor declared *"That Janet*

*is capable of deliberate falsehoods, even when perjury may be involved has been established."*

Stassis spends more than half of his time out-of-state performing experiments at various National Laboratories. He established, in spite of the long passage of time, that he was not in the state during the mother's conception periods for either child. His testimony was corroborated by the testimonies of several impartial witnesses and supported by official University and National Laboratory travel vouchers. He showed convincingly that the circumstances of conception, as given by Hartman at her interrogatories and deposition, were false. Faced with this documented evidence, Hartman modified repeatedly her statements. No witness, including her lover, Susan Jellinger, testified in support of her testimony. Only Dr. Mahoney, a serologist with Methodist Hospital in Des Moines, Iowa, presented "probabilities of paternity" based on blood tests, in support of Ms. Hartman's claim. Witnesses who testified for Stassis were Ms. Watson, who worked in the same office with the mother at the time of her first pregnancy; Dr. Klemm, a former Professor of Physics at Iowa State University, one of the numerous sexual partners of the mother; Ms. Shivvers, secretary of the Physics Department; two statistics experts; and Ms. Norma Puhman of the Department of Human Services. Numerous documents, including official travel vouchers, birth certificates, written statements by Hartman to the Department of Human Services, the written notes of Dr. Doran, her physician when she conceived and gave birth to the first child, support the testimony of Professor Stassis and the other defense witnesses and are part of the Trial Record.

The evidence overwhelmingly shows that Stassis could not be the father of these two children, and that these two children have different fathers whose identities are unknown. The State Courts found otherwise.

We maintain that Stassis, and undoubtedly thousands of other putative fathers in this and other states, is the victim of a blatant discriminatory system whereby the State passes the cost of raising children conceived out of wedlock from a group of citizens, all women, who freely have chosen to become mothers to the putative fathers, all men, irrespective of whether they are or are not the fathers of the children. In most cases, these mothers do not recognize any parenting rights of the man and wish to raise the children in unconventional households. Further, the system denies to men the option of a jury trial on the issue of paternity, while assuring that option to women.

## ARGUMENT

**I. The State Courts by denying Stassis his statutory right to a trial by jury violated his Constitutional Right to equal protection under the laws guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.**

The mother of the children, Hartman, commenced a paternity action against Stassis, alleging he was the father of her two children. The proceedings were identified as an equity action, making no reference to the specific provisions of Iowa law upon which the mother relied. Stassis filed an answer denying he was the father and

plead various legal defenses. He made a timely demand for a jury trial. In a pretrial ruling, the Court denied Stassis a jury trial and ruled against Stassis' claim that he was entitled to a jury trial which, if denied to him, constituted gender-based discrimination prohibited under the Fourteenth Amendment to the United States Constitution (App. 40-47).

Stassis petitioned the Iowa Supreme Court for permission to bring a pretrial Interlocutory Appeal on the jury trial issue. On November 13, 1990, the Iowa Supreme Court denied Stassis' application " . . . without prejudice to respondent's right to raise the interesting issue of gender-based equal protection violation on direct appeal in the event of an adverse final decree" (App.18).

The State Courts of Iowa have held that Petitioners can choose to file a paternity suit under either of two statutes: Chapter 675 of the Iowa Code (App. 48) that specifically sets out the procedures for paternity determination, remedies, etc., and Chapter 252A of the Iowa Code, the Uniform Support of Dependents Law (App. 50). Chapter 252A was adopted to deal with interstate cases to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support. Although 252A was adopted to deal with interstate cases, it was interpreted to apply in instate cases, such as the present case. Chapter 675 specifically allows each party to choose if he or she wishes, a trial by jury and the party that chooses to have a trial by jury prevails. Chapter 252A, on the other hand, makes only one reference to paternity actions and provides no procedures for determining paternity. Chapter 252A.10 merely provides that the alleged father shall

not be liable for support unless the ". . . natural father has been adjudicated to be the child's father by a court of competent jurisdiction . . . " From this reference alone, the Iowa Court has found a Legislative intent to create an equitable action which does not offend a right to trial by jury in a paternity action.

As a result of the Iowa Court's decision, in the State of Iowa, Petitioners, all women, can freely, if they wish, exercise their statutory right to a trial by jury by simply filing under Chapter 675. On the other hand, the Respondents, all men, cannot freely exercise their statutory right to a trial by jury; the Petitioners, all women, can block it by simply filing under 252A.

Actually the only reason that instate Petitioners, all women, file under 252A is to deny the Respondents, all men, their statutory right to a jury trial. Having their cases heard by State Court judges, the Petitioners, all women, feel assured that the Respondent will be declared to be the father.

This impermissible gender-based classification was created by the Iowa Supreme Court's holding in *Greenstreet v. Clark*, 239 N.W.2d 143 (Iowa 1976) and *State ex rel. Bishop v. Travis*, 306 N.W.2d 733 (Iowa 1981).

It is important for this Court to note that: *Iowa is the only jurisdiction in the United States of America that interpreted the Uniform Support of Dependents Law in a way to allow gender-based discrimination.* Every other jurisdiction which has considered the question has found that the statutory right of the Respondent to a jury trial must be retained following adoption of the Uniform Support of Dependents Law. *Wahlers v. Frye*, 288 N.W.2d 29 (Neb.

1980); *Clarkston v. Bridge*, 539 P.2d 1094 (Or. 1975); *Ezell v. Childs*, 497 S.E.2d 496 (Ala. Civ. App. 1985); *Commonwealth v. Lobo*, 432 N.W.2d 496 (Mass. 1982); *Metts v. State Department of Public Welfare*, 430 So.2d 401 (Miss. 1983); *Borchers v. McCarter*, 592 P.2d 941 (Mont. 1979); *Commonwealth v. Dillworth*, 246 A.2d 859 (Pa. 1968); *State v. Wright*, 736 S.W.2d 84 (Tenn. 1987). Indeed, no other jurisdiction has engaged in a statutory interpretation analysis similar to that employed in *Greenstreet v. Clark*, 239 N.W.2d 143 (Iowa 1976), and such analysis has never been cited in any other reported decision of any court anywhere.

The holdings of the Iowa Supreme Court in *Greenstreet v. Clark* and *State ex rel. Bishop v. Travis* are based on standards that in many respects are in conflict with the judgments of this Court.

In fact, *the Iowa Supreme Court based its judgment in these cases on a "rational basis" test.* This Court, on the other hand, *requires a "heightened standard" in gender-based classifications. Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985). The Iowa Court has ignored this very important difference or has chosen not to apply it.

In addition, this Court in *J.E.B. v. T.B* is presently considering whether the State can force a putative father to have his case decided by a panel of jurors consisting entirely of women. We conclude that this Court does recognize the fact that a paternity determination case is a serious conflict between a man and a woman. This was certainly not recognized by the Iowa Supreme Court in its

decision in *Greenstreet v. Clark* and *State ex rel. Bishop v. Travis* cited above.

To summarize, the interpretation of the paternity statutes by the State Courts of Iowa is in conflict with those of all other states in the United States that considered this question, was based on a weaker test than that required by this Court in a conflict that always involves two persons of different gender and it establishes clear gender-based discrimination violating Stassis' right under the Equal Protection Clause of the Fourteenth Amendment of the Constitution.

## II. The State's paternity statutes as modified by the Legislature and the Courts violate the Respondent's constitutional right to due process of law.

The paternity suit statute in this and other states was adopted when legally the child's life was assumed to begin at conception and therefore abortion was illegal and both man and woman were legally forced to become parents. After the *Roe v. Wade* decision of this Court that decided that at conception the fetus is not a person with protected legal rights including that of life, the paternity statute, instead of being eliminated or weakened, has been strengthened by consecutive decisions to facilitate assignment of paternity with little concern about the constitutional rights of men to due process or equal protection of law and the most fundamental human rights of the accused men and children. By using junk science, the burden of proof has been shifted from the woman to the man and any man who is unfortunate to be among the millions of men that the blood tests do not exclude is

assigned paternity. Corroboration of the word of the Petitioner was found unnecessary by the Courts. The statute of limitations has all but been eliminated, making it practically impossible for the accused man to prove his innocence. Finally, the only remaining protection of men against such abuses of the power of the State and State Courts, their statutory right to have their case judged by a panel of their peers, was abolished as we mentioned under Brief Point I.

All of these changes which undermine the rights of men and their ability to have a voice in their procreation choices and to defend paternity charges have been justified by the Court's mistaken reliance on paternity tests translated into mathematical "probability of paternity". We will address this central issue first.

A. Voodoo-statistics that transforms probabilities of paternity of the order of 1 over millions to "probabilities of paternity" exceeding 95% in all cases is admitted by statute as "evidence" and it is used to shift the burden of proof from the Petitioner to the Respondent.

Rudimentary common sense and hundreds of years of experience in this and other countries have established that in a paternity case the Petitioner must prove at least that (i) the Respondent had intercourse with the mother during her conception period, and (ii) no other man can possibly be the father. [These time honored principles of paternity determination are not even mentioned in the State statute.] To maximize the number of paternity assignments, the State by statute admits into evidence mathematically incorrect "evidence" of no probative value whatsoever, but of enormous prejudicial impact

and it uses it to shift the burden of proof from the Petitioner to the Respondent.

This statement may appear to this Court as outrageous, since it is "generally accepted by experts" that blood tests can prove paternity. This court should, however, notice that all these "experts" are self-serving serologists, medical doctors, child support enforcement officers, the American Association of Blood Banks, and a few lawyers, all with no expertise in statistics or mathematics. Our statement is the *unanimous* opinion of mathematicians and statisticians. As we did in the trial, we will *prove* these statements.

Let us state from the outset that *blood tests can prove with absolute certainty that a man cannot be the father*. This is an unrefutable fact based on well-established biological principles. As any exclusionary test, it provides also inclusionary information.

The probability of paternity provided by the tests can be easily evaluated from the information available to the serologist regarding the population of possible fathers and the exclusion power of the tests. The only information available to the serologist regarding the population of possible fathers is the race of the father (this information, which may or may not be correct is provided to the serologist, since he cannot even determine the race of the father from the results of his tests). Let us assume that the father is Caucasian, as it was assumed in this case. The *Population Reference Bureau* in Washington, D.C. estimates the Caucasian population as two billion five-hundred million, from which approximately one billion are men of

child-bearing age. The exclusion power of the tests performed in this case, as well as in most other cases, was given as 95%.

In other words 5% of one billion men, i.e., 50 million men, cannot be excluded by the test. Since any of these 50 million men can be the father, the probability of paternity provided by the tests is 1 to 50 million or two millionths of one percent (1/50,000,000 x 100% = 0.000002%).[1] Thus, the only information that the test provides is that the non-excluded man is among the millions of men that the tests cannot exclude and it has no probative value whatsoever.

Instead of reporting the real probability of paternity of one to several millions provided by the tests, the serologists use incorrectly a fundamental theorem of statistics, Bayes' Theorem, and fabricate "probabilities of paternity" that exceed 95%, in all cases, irrespectively of the actual facts of each case.

Bayes' Theorem is used in statistics to evaluate how the probability for a certain proposition to be true (referred to as prior to the test probability or simply *prior-probability*) is modified by the results of a test that tends to prove or disprove the proposition. To calculate probabilities by making use of Bayes' Theorem one needs first to know the prior-probability and the factfinder must

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[1] Even if incorrectly, we take only one million men as the population of possible fathers and assume an exclusion power of 99%, still the probability of paternity is one hundredth of one percent and of no probative value whatsoever (see e.g., *Plemel v. Walter*, 735 P.2d 1209, footnote at 1213 (Oregon 1987)).

always remain aware of the fact that the probability provided by Bayes' Theorem is zero if the prior-probability is zero. As a result, *the "probability of paternity" provided by the serologist is not independent evidence. It contains the prior-probability which is determined solely by the non-serological facts of the case,* such as whether a man had intercourse with the mother during her conception period, frequency of intercourse during this period, potency of the man, possible use of contraceptives by the man or the mother, etc. Although this is not evident, the serologist by making use of Bayes' Theorem makes assumptions about these non-serological facts that are the central issue of any paternity determination. The serologist assumes that there are only two men involved, the accused and a random man (or average man) and, since "he is neutral," assigns prior-probabilities of 1/2 (or 50%) to these two men. This is mathematically incorrect and violates the most elementary rules of statistics. Since before performing any tests, the only information available is that the father is among the one billion Caucasian men of child-bearing age, the prior-probability of each of these men, including the putative father, is one over a billion. Instead of using this prior-probability, the serologist assigns a prior-probability of 1/2 to the putative father and to obtain a probability of 1/2 for his "random man" he assigns a prior-probability of 1 over two billion to each of the remaining billion minus one man! This is voodoo-statistics of the worst kind. By assigning such a large prior-probability to the putative father and a prior-probability billion times smaller to all other men, *the serologist excludes the possibility that any other man can possibly be the father.* Thus, by using incorrectly Bayes'

Theorem, the serologists manage not only to find the non-excluded putative father to be the father, but also they assign him an outrageously large "probability of paternity." Actually, they advertise this fact in brochures. The advertisement of the Methodist Hospital in Des Moines where the tests in the present case were performed states:

> "We guarantee a likelihood of paternity of a least 95% or an exclusion."

In conclusion, we state that the "probability of paternity evidence" fabricated by the serologists using voodoo-statistics transforms probabilities of one over millions to "probabilities" exceeding 95% in all cases. Evidence which is mathematically incorrect recognized as such unanimously by the experts in the field, statisticians and mathematicians, is by definition inadmissible in a Court of law. Also, evidence that has no probative value whatsoever, but devastatingly prejudicial impact is by definition inadmissible in a Court of law. The State by making by statute this "evidence" admissible in Court violates the right to due process of the Respondents.

Although some Courts [i.e., *Plemel v. Walter*, 735 P.2d 1209, 1213 footnote 4 (Oregon 1987)] and commentators are aware that the correct probability of paternity provided by blood tests is insignificant, no Court examined whether the "probability of paternity evidence" provided by serologists has any sound mathematical foundation.

The few Courts that examined seriously the "probability of paternity evidence" [(*Commonwealth v. Beausoleil*, 490 N.E.2d 788 (Mass. 1986); *Kofford v. Flora*, 744 P.2d 1343 (Utah 1987)] did not examine whether it is mathematically sound but concentrated their attention on what

the serologist *assumes* as a mathematically proven fact, and therefore must be proven by the Petitioner independently of the serologist's results. These Courts, to their credit, realized immediately that by assigning a non-zero prior-probability to the accused man, the serologist assumed as a mathematically proven fact that the putative father had intercourse with the mother during her conception period (and that he is not impotent, and that neither he nor the mother made use of a contraceptive). Unfortunately, these Courts did not realize as we have shown above, that the serologist assumes as a mathematically proven fact that the putative father and only he can possibly be the father. As we have shown in Court, this very important fact can also be seen as follows. If we assume that it is possible that another sexual partner of the woman is the actual father, the serologist would also assign to him as well as to the Respondent a "probability of paternity" exceeding 95%. The sum of the probabilities would exceed 190% which is mathematically impossible. Thus following the approach adopted by these Courts, *The Petitioner must prove independently of the probability of paternity evidence that (i) the Respondent had indeed intercourse with the mother during her conception period and (ii) that the respondent and only he (and not another sexual partner of the mother) can be the father. In other words, the "probability of paternity" is not of any probative value unless the Petitioner proves her case independently of the "probability of paternity" evidence, in which case it is superfluous. Unfortunately, only (i) was realized by the Courts.*

We bring to the attention of this Court another point that is widely misunderstood. Assumptions (i) and (ii) are mathematical assumptions on which the "probability

of paternity" calculations are based. As such, these assumptions must be satisfied in the mathematical sense of the word: with mathematical certainty. In other words, *the "probability of paternity" evidence is of no probative value unless the Petitioner proves her case independently of the "probability of paternity" evidence with mathematical certainty, i.e., with a standard of proof exceeding that required in criminal cases.* To the best of our knowledge, only the judges of the Supreme Court of Massachusetts realized this important point (see below).

Properly briefed juries in several cases that reached the Supreme Courts of several jurisdictions also realized this, disregarded the "probability of paternity" evidence, and ruled for the Respondents (*Chisholm v. Eakes*, 573 So.2d 764 (Miss. 1990); *Wilberg v. Hogen*, 382 N.W.2d 556 (Minn. Appl. 1986); *Smith v. Schafer*, 515 A.2d 527 (Pa. 1986). Some excerpts from these relatively recent decisions are given below.

> "Additionally, the judge should instruct the jury, if he is so requested, that they may not consider HLA test results as evidence of intercourse, and that they may not consider such evidence of paternity unless they have found beyond a reasonable doubt, that sexual intercourse at or about the time of conception had taken place between the mother and the alleged father." *Com. v. Beausoleil*, 490 N.E.2d 788, 797 footnote 18 (Mass. 1986).

Also,

> *"No test tends to prove a fact it assumes.* The HLA test, therefore, has no relevancy to the question, typically the one critical question in a paternity case, whether the defendant had intercourse

> with the mother at a time and in circumstances that would explain the conception of the child . . . Because of the futility in expecting triers of fact, especially juries, to comply with an instruction to ignore the probability of paternity factor based on HLA testing in determining whether the defendant had intercourse with the mother at or about the time of conception, I would hold that HLA based probability of paternity estimates are inadmissible except in the second segment of a bifurcated trial following a finding on that critical issue by the judge or the jury." *Com. v. Beausoleil*, at 801 n.1, 490 N.E.2d at 797 n.18 (Mass 1986). [Emphasis added].

The emphasized statement summarizes with striking precision and beauty what mathematicians and statisticians have proven by simple calculation of the correct probability of paternity.

> "The factfinder must also be informed with the greatest clarity possible that it must disregard the probability of paternity statistics if it finds that the putative father did not have sexual intercourse with the mother during the period of conception." *Kofford v. Flora*, 744 P.2d 1343, 1352 (Utah 1987).

> "A trial of paternity is essentially a trial of the complaining mother's credibility" *Chisolm v. Eakes*, 573 So.2d 764, 768 (Miss. 1990).

If these Courts had realized that the serologist actually *assumes* as a mathematically proven fact that the accused man and only he can be the father, we are confident they would have found such evidence inadmissible in a Court of law.

The State Court Judge's use of the "probability of paternity evidence" in the present case is without precedent in the annals of paternity determinations in the United States. It is in complete conflict with the reasoning and approach adopted by the Supreme Courts of several jurisdictions, cited above, following *Commonwealth v. Beausoleil.*

The Trial Judge shifted the burden of proof from Ms. Hartman to Stassis. Although Ms. Hartman did not present any evidence that Stassis was in the state during her conception period, the Trial Judge required that Stassis establish "accurately" his whereabouts.

Disregarding the expert testimony presented in the trial and opinions from learned treatises read in the Trial Record, the Trial Judge produced a reasoning that it is mathematically incorrect. He finds that the admitted promiscuity of Ms. Hartman only subtracts from her testimony, without realizing that this makes the "probabilities of paternity" irrelevant, since the serologist, as we pointed out, assumes as a mathematically certain fact that no other sexual partner can possibly be the father. As we pointed out in our appeal, only by testing the other non-excluded fathers, can the tests provide information about paternity. Then he finds, we claim incorrectly, that intercourse during the conception period was "more likely than not." As we emphasized above (see page 16 of this document), the serologist's probability of paternity is of probative value only if Ms. Hartman proves intercourse with Stassis during her conception period with mathematical certainty (interpreted by the Supreme Court of Mass. as beyond any reasonable doubt"). Thus again, following his own finding, the Trial Court Judge uses the

wrong numbers. The correct way to proceed following such a ruling is first to quantify the "more likely than not," by saying, for instance, that there is a 60% probability for the man to have had intercourse with the mother during her conception period. Then, the "probabilities of paternity" that he must use in the remainder of his reasoning are the serologist's probabilities multiplied by 0.60. To make matters worse, the Trial Judge used a "formula" that has never been used before in a paternity determination anywhere. Finally, as pointed out in our appeal, the Trial Judge committed two evident reversible errors. The miraculous "formula" and the article from which the Judge borrowed it were not introduced in evidence at bar. If this "formula" was introduced as evidence, we would have shown that it is mathematically incorrect. It is clear that the Trial Judge not only appointed himself an expert of statistics but acted as an expert witness for Ms. Hartman. The reasoning of the Supreme Court of Iowa on the admissibility of these hearsay statements and assertions are in direct conflict with the reasoning of the United States Court of Appeals for the Sixth Circuit in *Ross v. Gardner*, 365 F.2d 554 (6th Cir. 1966) and the holding of this Court in *Reilly v. Pincus*, 338 U.S. 269, 70 S.Ct. 110 (1949). In addition, as we emphasized in our appeal, the Trial Court erred by admitting without sufficient foundation the "probability of paternity evidence" based on a comparison of the blood markers of Stassis with those of men from a data base comprised entirely of European Caucasian men. From the start, the Trial Judge was using the wrong numbers for the "probability of paternity." The serologist in this case assumed also that the father must have been born in Europe from European

parents, as Stassis. It is evident that the base he should have used is a base comprising at least both European *and* American Caucasian men. On voir dire, the serologist, Dr. Mahoney, testified that he did not know how many persons were represented in the data base or how many were of Greek origin. To the best of our knowledge, this base has never been used in any paternity determination in the United States.

The Court of Appeals rejected all our arguments and upheld the Trial Court's judgment in all of these issues involving the "probability of paternity evidence." This may be due to the fact that the Supreme Court Justices have a completely erroneous impression of what the serologists provide as "probability of paternity". We quote from their decision:

> "The paternity probability is a measure of likelihood based solely on serological information apart from any non genetic evidence for or against paternity."

This is simply incorrect. The "probability of paternity" as any probability evaluated using Bayes' Theorem contains the prior-probability which is determined solely by the non-serological facts of the case.

When this case was still on appeal, the legislature changed again the paternity statute requiring that if the "probability of paternity evidence" exceeds 95% (a result guaranteed by the serologist of Methodist Hospital in Des Moines), the Respondent must prove with clear and convincing evidence that he is not the father, exactly what the courts of this state were practicing. In the United States of America, only Alaska, Maine, and Oklahoma

have adopted such a provision. We are unaware how much this legislative decision contributed to the dismissal of our appeal.

This Court never examined the admissibility of the "probability of paternity" in a Court of law. In view of its abusive use in this and a few other States, we feel that this Court must address this question. It affected the decisions of this Court in several important cases mentioned below.

B. The State of Iowa, by eliminating for all practicable purposes the statute of limitations, makes it impossible for the Respondents to prove their innocence.

We reproduce here the "reasoning" of the Trial Judge in reaching his conclusion regarding the central issue of any paternity determination: whether intercourse took place during the conception period of the child.

> "Janet testified with seeming certainty that she only had intercourse once, and that with Constantine, during the possible conception period for Lillith. Detracting from her assertion is her confusion as to when conception took place – June or July – and her admitted promiscuity during 1980. There is less confusion as to when conception occurred and little evidence of intercourse with other men in Rhea's case.
>
> In both cases Constantine attempted to establish he was out of the state during the appropriate periods. He was not successful, but this problem in accurately establishing his whereabouts may have been exacerbated by Janet's delay in commencing this action – eight years after Lillith's birth and four years after Rhea's.

> That Janet is capable of deliberate falsehoods even when perjury may be involved has been established. She certified that the father was unknown in her applications for public assistance but has now testified she knew the father was Constantine. On the other hand, would she now risk a serious criminal prosecution by lying about Constantine's being the father of her children?"

It is clear that the Judge demands that Stassis establish "accurately" his whereabouts eight years after the birth of the first and four years after the birth of the second child. This statement is incorrect since Stassis did establish that he was out-of-state during his alleged sexual encounters with Ms. Hartman, but this is not the point here. In principle, Stassis does not have to establish anything, since Ms. Hartman has the burden of proof. From the outset, as we already pointed out, the Judge has shifted the burden of proof from Ms. Hartman to Stassis. He should have asked for Ms. Hartman to prove at least that Stassis was in the state. But more fundamentally, how can a Respondent be asked to "accurately" establish his whereabouts eight or four years after the fact? The State, by eliminating completely the statute of limitations, made it impossible for Stassis to do so. These arguments were part of the latches defense presented in our brief to the Trial Judge. This defense was dismissed on the basis of the following argument (page 17 of his opinion):

> "If benefits were being sought for Janet, her delay may well be inexcusable."

We frankly do not see the connection between the benefits to the children and the fact that as a result of the intentional delay of Ms. Hartman to bring this action:

- Stassis found himself to be accused to be the father of two children.

- Many official and personal documents that could be used to establish even more accurately than we did that Stassis was out-of-state at the time of his alleged sexual contacts with the mother were unavailable.

- Many witnesses, especially a large number of non-excluded fathers, could not be located.

- That Stassis was refused access to one of the three volumes of Hartman's records with the Department of Human Services, the one containing the investigations of this Department, on the excuse that it was "misplaced" after so many years.

By eliminating completely the statute of limitations, the State deprived the Respondents of the means of proving their innocence and therefore their right to due process of law. In addition, as the present case shows, the complete elimination of the statute of limitations made it possible for irresponsible women to fraudulently have not one, but several children, secure custody, and raise them in unconventional households without interference from any man. They can violate the parental rights of the man and the right of the child and father, no matter who he is, to develop a parent-child relationship. After a decade or decades, these women can ask and receive two or three times the cost of raising the child or children from an unsuspecting man who may not be the father and cannot prove that he is innocent. Unfortunately, the complete elimination of the statute of limitations has been justified by reference to a series of opinions of this Court –

*Gomez v. Perez*, 409 U.S. 535 (1973); *Mills v. Habluetzel*, 456 U.S. 91 (1982); and *Clark v. Jeter*, 108 S.Ct. 1910 (1988).

At the time of these decisions, however, this Court was not aware of the abusive use of the "probability of paternity evidence" by States, nor of the extent of their determination to assign paternity to any man who cannot prove with absolute certainty that he is not the father. Neither this Court was aware that a minority of irresponsible women will be allowed by the states to make such use of the paternity statute. We are certain that if this Court was aware of these facts, it would have recommended safeguards so that the rights of both men and children are protected. Only this Court can address these complex issues.

C. The State statute does not require corroboration of the word of the Petitioner. As a result, Respondents are assigned paternity on the uncorroborated word of the Petitioner, even if she is a perjurer and felon as we proved in the present case.

The punch line of the ruling of the Trial Judge is:

> "would she now risk a serious criminal prosecution by lying about Constantine's being the father of her children?"

This argument can be made and it is made in all paternity cases. It shows that the State judges will assign paternity to any putative father on the uncorroborated word of the Petitioner, even if she is proven in Court to be a perjurer and felon as we proved in the present case. This approach has been adopted following the ruling of the Iowa Supreme Court in *Iowa ex rel. Iowa DHS v. Duckert*, 465 N.W.2d 871, point 8 at 872 (Iowa 1991). On the basis of

this ruling, the word of the Respondent can be ignored even if it is corroborated by the testimony of unimpeachable witnesses.

Concluding this rather long section, it is fair to state that it is clear that the State is determined to assign routinely and systematically paternity on the word of a woman, even if she is proven in Court to be a perjurer and a felon, unless the man proves with absolute certainty that he is not the father. It is clear that the paternity statutes of the State as strengthened by repeated revisions of the Code and State Court decisions violates the constitutional right of men to due process of law and it can be used to violate the most fundamental human rights of both men and children.

**III. The State of Iowa, by forcing men who are certain that they are not the fathers, to support the children of women, but not requiring from these women to work to support their children, even if they are capable and highly qualified to be gainfully employed, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution by discriminating on the basis of gender.**

The Trial Judge states on page 17 of his ruling:

> "Janet has no income except public assistance payments, which are excluded under the guidelines. However, she is qualified to work and has the capacity to do so. *That she does not is her choice.*" [Emphasis added].

In other words, the mother of the children can choose to not support her children by refusing to work and the State supports her and her children for decades. The

State, on the other hand, forces a man who is certain that he is not the father, and the State did not prove by any standard of proof that he is the father, to support the children. In addition, the Court makes sure that the child support payments are at least twice as much as the mother receives in public support assuring that the putative father supports the mother as well. This is also gender-based discrimination. In addition, in this case, the children are raised in a lesbian household consisting of two "mothers" with University degrees. These "mothers" should be asked to shoulder the financial responsibilities of their life-style choices.

**IV. The Courts of Iowa, by extending the applicability of the paternity statute to lesbian couples with established family units and thus offering incentives to a group of citizens, all women, with protected procreational and parental rights to violate by fraudulent means these same rights of another group of citizens, all men, is in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution.**

The paternity statute in this as well as in all other states was adopted at a time when legally life was assumed to start at conception and as a result abortion was illegal. Irrespective of the circumstances of conception, both the man and woman involved were legally bound to become parents and assume the responsibilities of parenthood. After the historical decision of this Court in *Roe v. Wade*, the fetus in the first three months of the pregnancy does not have any legal rights including that of life and certainly not the legal right of support of the

man whose only participation in the process is his contribution to the formation of the fertilized egg. According to the law, the decision to allow the fetus to acquire progressively legal rights and to abort or give birth to the child rests entirely with the woman. The State and the man involved, even if he is the woman's husband, do not have any say in the matter. *Legally, therefore, the woman and only the woman should, in principle, assume the financial burden of raising the child unless the man is informed that he is to become a father and agrees to assume the responsibilities of parenthood.* No such provision exists in the State statute. The conception may have been the result of fraud and even rape by the woman; the woman may not have informed the man, even less get his agreement for support of the child; she may have deprived him of all his parental rights, and still when the children are grown up and become adults, she can recover from an unsuspecting man the financial burden of raising the child or children. We maintain that the law as interpreted by the Courts of the State is in violation of the equal rights amendment and all standards of justice, fairness, and decency. In addition, it is irresponsible public policy. *Women who wish to become single mothers and raise their children without the participation of a man are free to do so, but they should be asked to assume the financial burden of their choice.*

Following *Roe v. Wade*, the reproductive rights of men are also protected on equal protection grounds. In addition, these rights were explicitly formulated by the Supreme Court of Tennessee in *Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992). In its decision, the Supreme Court of Tennessee recognized that the reproductive rights of men, as those of women, are autonomous and protected by the

Constitution. In addition, this Court recognized "two aspects of procreational autonomy, the right to procreate and the right to avoid procreation," *Ibid.* [12], p. 603.

Only this Court has the legal and moral authority to address these issues and provide the guidelines necessary to curb the abusive use of the paternity laws by the states that have made putative fathers the scapegoats of their failed public policies. Eventually, the states and their Courts must realize that in a democratic society, men and children also have rights and personal freedoms that are protected by the Constitution.

## CONCLUSION

This case is unprecedented and raises serious Constitutional questions. It is clear that the State of Iowa is determined to pass the cost of supporting illegitimate children from a group of citizens, all women, who freely decided to become mothers to another group of citizens, all men. To this effect, the paternity statute has been modified in order to maximize the number of paternity assignments to putative fathers with little concern for the fact that this procedure also maximizes the number of false paternity assignments. The State paternity statute blatantly violates the Constitutional rights of the Respondents to equal protection under the laws and to due process of law.

In addition, the present case raises serious questions whether the law, as formulated, belongs to the Code of any democratic society of equal men and women and in which abortion is legal. Not only does it fail to protect the

fraudulent violation of the procreational and parental rights of men by women whose procreational and parental rights are protected, but it offers incentive do to so. It is important for this Court to note that any moral or legal argument made to justify this practice can also be made for making abortion illegal. It is clear that eventually this Court must decide when the right to freedom of choice of a woman infringes on the rights of men and children as well. These are serious constitutional, human rights, and public policy issues.

Only this Court has the political independence and the legal, as well as moral, authority to deal with these questions. In deciding such issues, this Court should examine the approach adopted by other democratic societies (i.e., Holland, Denmark, France, etc.) in resolving these subtle conflicts. For these reasons, this Court should grant the writ.

Respectfully submitted,

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No. _____

In The

# Supreme Court of the United States

October Term, 1993

CONSTANTINE STASSIS,

*Petitioner,*

vs.

LILLITH JOY HARTMAN AND
RHEA ROBIN HARTMAN, MINORS,
BY THEIR NEXT FRIEND
JANET HARTMAN,

*Respondents.*

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF IOWA

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IN THE COURT OF APPEALS OF IOWA

No. 2-390 / 91-1269

LILLITH JOY HARTMAN and
RHEA ROBIN HARTMAN, Minors,
By Their Next Friend
JANET HARTMAN,

Appellees,

vs.

CONSTANTINE STASSIS,

Appellant.

(Filed May 25, 1993)

---

Appeal from the Iowa District Court for Polk County, James W. Brown, Judge.

Stassis appeals and Hartman cross-appeals the district court's adjudication of Stassis's paternity of Hartman's two children. **AFFIRMED.**

Raymond Rosenberg of The Rosenberg Law Firm, Des Moines, for appellant.

Thomas J. McCann of Peddicord, Wharton, Thune & Spencer, A Professional Corporation, Des Moines, for appellees.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

**SCHLEGEL, J.**

Stassis appeals and Hartman cross-appeals the district court's adjudication of Stassis's paternity of Hartman's two children. Stassis contends the trial court erred by: (1) finding the blood testing results, when combined with other evidence, established that Stassis is the father of both children; (2) admitting evidence of the probability of paternity based on a comparison of blood with that of men from a data base comprised entirely of European Caucasian men; (3) considering hearsay statements contained within law review articles; (4) concluding the defense of laches was not established; (5) establishing a support obligation on Stassis when the lesbian mother of the children falsified records to obtain public assistance; and (6) denying him a jury trial in violation of his constitutional rights. On cross-appeal, Hartman contends the child support award is inadequate, and she argues she should be awarded attorney fees.

Constantine Stassis is a physics professor at Iowa State University. He met Janet Hartman who worked as a secretary for the physics department. The two became friends and developed a casual and sporadic sexual relationship which lasted between 1978 and the beginning of 1986. During this time period, Stassis lived with a companion whom he described as a common law wife. Hartman, a lesbian, lived with her lover, Susan.

Hartman is the natural mother of Lillith Joy Hartman, born April 3, 1981, and Rhea Robin Hartman, born April 19, 1985. Since 1981, and through trial, Hartman has been unemployed and has lived on ADC. She received $426 per month in ADC benefits and $275 in food stamps. By 1990, Stassis earned in excess of $100,000 annually.

On July 21, 1989, Hartman filed a petition in equity seeking to establish paternity and child support. She named Stassis as the father of her two children even though when she applied for public assistance she maintained that the father of her two children was unknown. Stassis denied paternity and presented evidence that Hartman had purposefully engaged in sexual relations with several men so that she could have children to raise in a homosexual environment while supporting the children with public assistance.

Hartman presented testimony that she had engaged in sex with Stassis during the relevant time periods. Stassis disputed the evidence. Hartman also presented expert testimony concerning the results of blood tests which indicated that the probability Stassis was the father of Lillith was 99.896711 percent and the probability he was the father of Rhea was 99.9977529 percent.

Although Stassis disputed the calculations of probability, the district court determined that Stassis is the biological father of both children. The court directed Stassis to pay child support to Hartman in the sum of $1,200 per month retroactive to July 21, 1989, to be paid until each child reaches age eighteen. When there is only one dependent child, the support award will be reduced to $950 per month. In addition, the court ordered Stassis to provide health insurance for his daughters and to pay one-half of all their uninsured health benefits. No attorney fees were awarded. Stassis appeals; Hartman cross-appeals. We affirm.

The present case is an action in equity brought under Iowa Code chapter 252A (1989). Review in equity cases

shall be de novo. Iowa R. App. P. 4. The petitioners' burden of proof is to establish paternity by a preponderance of the evidence. *In re Marriage of Schneckloth*, 320 N.W.2d 535, 536 (Iowa 1982); *Moody v. Christiansen*, 306 N.W.2d 775, 777 (Iowa 1981).

On appeal, Stassis first contends the district court incorrectly found that the blood testing results, when combined with other evidence, established by a preponderance of the evidence that Stassis is the father of Lillith and Rhea. Stassis claims the evidence does not support a finding that he had sexual intercourse with Hartman during the periods of time when conception of the children occurred. In addition, Stassis argues that the probabilities of paternity produced in the current case are invalid because: (1) the statistical analysis used to determine the probabilities was faulty; and (2) the serologists used an incorrect data base in evaluating the probabilities. We find these arguments to be unpersuasive.

The use of blood-grouping tests in proving paternity is highly probative. *Little v. Streater*, 452 U.S. 1, 6-8, 101 S. Ct. 2202, 2205-06, 68 L. Ed. 2d 627, 632-34 (1981). Blood tests are probative, because "there is seldom accurate or reliable eyewitnesses since the sexual activities usually take place in intimate and private surroundings, and self-serving testimony of a party is of questionable reliability." *Id.* Traditional blood tests do not prove paternity. The tests prove nonpaternity, excluding from the class of possible fathers a high percentage of the general male population. *Mills v. Habluetzel*, 456 U.S. 91, 98, 102 S. Ct. 1549, 1554, 71 L. Ed. 2d 770, 777 (1982). The fact that a certain male is not excluded by the blood tests does not, in and of itself, prove that he is the child's natural father.

It only proves the male is a member of the limited class of possible fathers. Recent developments in the field of blood testing have sought not only to prove nonpaternity, but also to predict paternity with a high degree of probability.

Two of the major type of blood tests used in paternity testing are the red cell blood-grouping tests and the HLA test. Doctor Russell Mahoney, a pathologist at Iowa Methodist Medical Center in Des Moines, performed the tests and testified as to the results. It must be noted that Stassis has no dispute with the testing procedures used by Dr. Mahoney. Stassis does not take issue with the quality control methods, and he agrees with the genetic markers as found in Dr. Mahoney's report. Stassis has further acknowledged on the witness stand that he is not excluded from paternity.

The principal non-serological factor which Stassis contests is his involvement in sexual intercourse with Hartman during the time periods of conception. After carefully reviewing the record and considering the parties' arguments, we agree with the district court's conclusion:

> It is, however, inescapable that Constantine had a long term sexual relationship with Janet and that they were having intercourse in the general time periods involved for both children. When all of the evidnece [sic] bearing on intercourse at the appropriate times is considered it is more likely than not Constantine [Stassis] had intercourse with Janet [Hartman] during a period of time when conception of both Lillith and Rhea could have occurred.

The primary issue in this case is the weight to be afforded the statistical computations which show the probability of Stassis's paternity of Lillith is 99.896711 percent and of Rhea is 99.9977529 percent. The tests used in this disputed paternity case involving blood specimens of the individuals involved are generally accepted in the fields of pathology and serology as being very reliable. *State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208, 211 (Iowa 1982).

Here, Dr. Mahoney testified that the probability that a mating of the known mother and a particular nonexcluded putative father would produce a child with the genetic markers in question can be calculated. Once the markers are identified, frequency tables are consulted which calculate the frequency with which the particular antigen pairs in question occur in the general population of a particular ethnic group. The combined frequencies of the specified HLA, ABO, MN, and Rh factors result in a probability that the putative father is the natural father.

The actual calculations used are based upon a mathematical probability theorem, introduced by Thomas Bayes, known as "Bayes' Theorem." In the testing for paternity, pathologists apply the theorem differently, based upon a modification applied by Essen-Mollen. This is the essence of Stassis's objection to the pathologist's calculation. Stassis would have the calculation made solely from a group made up of "the men who had access during the time of fertility and conception." To do so, however, ignores the many peculiar attributes of paternity determination.

If a group of putative fathers was being considered, a computation of the probability of paternity for any among that group would be possible by direct application of Bayes' Theorem. *See*Terasaki, *Resolution by HLA Testing of 1000 Paternity Cases not Executed by ABO Testing*, 16 J. Fam. Law 543, 549 (1977-78). However, such a study is impossible in a typical paternity case since the precise makeup of such a group of putative fathers can not be provided. For this reason, a comparison of a nonexcluded putative father with a hypothetical man who is assumed to be random with respect to his antigen markers and to be unrelated to the putative father is made. The probability that a mating of the known mother with the randomly chosen man would produce a child with the genetic markers in question is computed with the use of frequency tables.

The probability of paternity for the putative father, then, is the ratio of his probability to the sum of the probabilities of both men (himself and the randomly chosen hypothetical man). This is the Essen-Mollen version of Bayes' Theorem generally accepted and applied in the fields of pathology and serology. The paternity probability is a measure of likelihood based solely on serological information apart from any nongenetic evidence for or against paternity. The calculation is a guide, useful to the court, which is combined with other factors to determine whether or not the putative father is the natural father of the child in question.

In *Vinsand*, the Iowa Supreme Court held that HLA test results indicating a 98.6 percent probability of paternity established the petitioner's claim of paternity by a preponderance of the evidence when weighed with all

other evidence. We find the evidence in the present case to be sufficient to establish paternity.

Stassis also asserts the trial court erred by admitting evidence of the probability of paternity based on a comparison of the blood and HLA of Stassis with that of men from a data base comprised of European Caucasian men. There is no dispute that Stassis is of Greek origin. Dr. Mahoney testified that this data base, used in determining the probability of paternity, is among those data bases generally accepted among pathologists and serologists in paternity testing. Accordingly, this evidence is admissible as part of Dr. Mahoney's expert opinion. The fact that Dr. Mahoney stated in voir dire he did not know how many persons were represented in the data base or how many of those represented were of Greek origin goes to the weight to be afforded the evidence, not to its admissibility.

We also disagree with Stassis's argument that the trial court committed reversible error in referencing statements contained within law review articles when rendering its findings of fact and conclusions of law. The three law review articles of which Stassis complains are all referenced in *Kofford v. Flora*, 744 P.2D 1343, 1348-49 (Utah 1987). A plain reading of the district court's ruling in the present case reveals the court was not relying on articles "outside the record" as Stassis asserts. The district court cites *Kofford* to support the proposition that a preliminary determination must be made concerning sexual intercourse before inclusive HLA testing can have any validity. *Id.* at 1352. All three articles are cited by the Utah court to support this proposition, a proposition which Stassis relies upon in his brief.

In addition, courts which have addressed paternity testing issues have cited heavily to learned treatises in an effort to explain the particulars of such tests. Our own supreme court has cited one of the complained-of articles in the *Vinsand* case. *Id.*, 318 N.W.2d at 211-12.

Likewise, we reject Stassis's argument that the petitioners' paternity claim is barred by the equitable defense of laches. Stassis premises this claim on the fact that no action was brought until eight years after Lillith's birth and four years following Rhea's birth. To raise such a defense, a party must show that material prejudice resulted from the passage of time. *Cullinan v. Cullinan*, 226 N.W.2d 33, 36 (Iowa 1975). Stassis claims he was materially harmed because of the unavailability of relevant travel records during the two periods of conception and the unavailability of many witnesses. Stassis contends the travel records, which have been destroyed, would have shown he did not have sexual access to Hartman at the times Hartman claims.

The court in *Moody v. Christiansen*, 306 N.W.2d 775 (Iowa 1981) considered similar arguments before rejecting the laches claim. In *Moody*, the petitioner brought a paternity action under Iowa Code chapter 252A, claiming he was materially prejudiced by unavailable witnesses and the passage of six years. The court held, as we do here, that the respondent [here Stassis] did not show he attempted to find the witnesses and failed to show the witnesses could not have been located with due diligence. *Id.* at 777-78. More specifically in the instant case, no showing was made that one nonexcluded father, Dr. Robinson, was not available. In addition, another nonexcluded father, Dr. Klem, did testify at trial.

The respondent in *Moody* also claimed the passage of time caused him material harm as a result of the general difficulty of recalling events long past. The court noted that no harm resulted to the respondent since the mother recalled specific dates essential to the case, and she had the burden of proof. *Id.* In the present case, Stassis has failed to demonstrate that he was materially prejudiced. While Stassis did establish the existence of some relevant travel records from Iowa State University, he did not show the absence of other records. Stassis has failed to establish the defense of laches.

Next, Stassis argues his child support obligation to Lillith and Rhea should be excused because Hartman conceived these children "knowingly and intentionally . . . under deceptive circumstances which [Hartman] devised so that the father of the child[ren] be unknown or uncertain so that the child[ren] can be raised in a homosexual household where the [biological] mother and her lesbian lover have established a family unit and assumed parenting roles and many years after the birth of the child recover support from an unsuspecting putative father . . . " First of all, we question the factual foundation in the record to support such a claim.

More importantly, however, the overriding public policy with respect to child support is "to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes." *See* Child Support Guidelines, adopted effective December 31, 1990. It is well established that parents have a legal obligation to support their children. *In re Marriage of Fleener*, 247 N.W.2d 219, 221 (Iowa 1976). The object and purpose of

the laws governing the imposition of child support have authorized courts to enforce "the legal as well as moral duty of support between parent and child." *In re Marriage of Carney*, 206 N.W.2d 107, 112 (Iowa 1973). These principles which guide the determination of child support remain the same regardless of the form of the action brought to collect it. *Moen v. McNamara*, 272 N.W.2d 438, 439 (Iowa 1978).

We can find no authority to support Stassis's suggestion that we consider the circumstances surrounding the children's conceptions or the lifestyle choices of the mother in determining paternity and child support. Accordingly, having considered Stassis's arguments as well as Hartman's cross-appeal on this issue, we affirm the district court's child support award.

Finally, Stassis argues the district court denied him his constitutionally guaranteed right of equal protection of the laws by denying his request for a jury trial. The basis of Stassis's argument is that a denial of a jury trial under chapter 252A creates an impermissible gender-based classification and is thus a violation of equal protection. In *State ex rel. Bishop v. Travis*, 306 N.W.2d 733 (Iowa 1981), the court addressed the issue of whether the denial of the right to jury trial under Iowa Code chapter 252A, when contrasted with the right to jury trial granted under Iowa Code chapter 675, is a denial of equal protection of the laws. The court held that the denial of a jury trial under chapter 252A is not a denial of equal protection. The court stated:

> Two methods to establish paternity are provided by alternative Iowa statutes. Traditional actions

> have long been provided by what is now chapter 675, The Code 1981. Under section 675.18, either party can demand a jury trial, a right in existence since the 1851 Code. Paternity can now also be established as an adjunct to a proceeding under Chapter 252A, The Code (uniform support of dependents law). *Greenstreet v. Clark*, 239 N.W.2d 143, 147 (Iowa 1976). But where a proceeding to establish paternity is brought under chapter 252A, there is no right to a jury. *Id.* at 148. This appeal turns on whether the denial of the right under one chapter, when contrasted with the right granted under the other chapter, is a denial of equal protection of the laws. The trial court thought not and we agree.

*Bishop*, 306 N.W.2d at 734. Relying on the underlying reasoning of the *Bishop* and *Greenstreet* decisions, we reject Stassis's equal protection claim. Stassis was not denied equal protection of the laws as a result of the trial court's denial of his request for a jury trial.

Considering all of the evidence in the present case, we find the petitioners have established their claim of paternity by a preponderance of the evidence. The costs of this appeal shall be paid by the respondent, Stassis. The parties shall pay their own attorney fees.

**AFFIRMED.**

**IN THE SUPREME COURT OF IOWA**

No. 91-1269

Polk County No. CE-3218849

ORDER

**LILLITH JOY HARTMAN and**
**RHEA ROBIN HARTMEN, Minors,**
**By Their Next Friend**
**JANET HARTMAN,**
**Petitioners-Appellees,**

**vs.**

**CONSTANTINE STASSIS,**
**Respondent-Appellant.**

**(Filed Jul 30, 1993)**

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After consideration by this court en banc, Snell, J., not participating, further review of the above-captioned case is hereby denied.

Dated this 30th day of July, 1993.

THE SUPREME COURT OF IOWA

By /s/ Arthur A. McGiverin,
Arthur A. McGiverin,
Chief Justice

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**IN THE SUPREME COURT OF IOWA**

No. 91-1269

Polk County No. CE-32 18849

ORDER

**LILLITH JOY HARTMAN and RHEA ROBIN HARTMEN, Minors, By Their Next Friend JANET HARTMAN,**
**Petitioners-Appellees,**

**vs.**

**CONSTANTINE STASSIS,**
**Respondent-Appellant.**

**(Filed Aug 16, 1993)**

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The court has before it respondent-appellant's motion for stay and petitioners-appellees' resistance.

Upon due consideration, the court finds that the motion for stay should be, and it is, hereby denied.

Dated this 16th day of August, 1993.

/s/ Louis A. Lavarato
Justice – Supreme Court
of Iowa

Copies to:

Tom McCann
218 6th Ave., Suite 300
P.O. Box 9130
Des Moines, IA 50306

Raymond Rosenberg
Dean Stowers
1010 Insurance Exchange Bldg.
Des Moines, IA 50309

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

August 17, 1993

Mr. Raymond Rosenberg
1010 Insurance Exchange Bldg
505 Fifth Avenue
Des Moines, IA 50309

RE: Lillith Hartman, et al,
v. Constantine Stassis
Application No. A-153

Dear Mr. Rosenberg:

The application stay of execution of judgment in the above-entitled case has been presented to Justice Blackman who on August 17, 1993, endorsed thereon the following:

"Denied
Associate Justice Harry A. Blackmun
8/17/93"

Very truly yours,

WILLIAM K. SUTER, Clerk

By /s/ Cynthia Rapp
Cynthia Rapp
Assistant Clerk

NOTE – FOR YOUR INFORMATION: A copy of this letter has been sent to all interested parties shown on the attached notification list.

NOTIFICATION LIST

Mr. Raymond Rosenberg
1010 Insurance Exchange Bldg
505 Fifth Avenue
Des Moines, IA 50309

Mr. Thomas McCann
P.O. Box 9130
Des Moines, IA 50306-9030

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

September 1, 1993

Raymond Rosenberg
1010 Insurance Exchange Building
505 Fifth Avenue
Des Moines, Iowa 50309

RE: Constantine Stassis
v. Lillith Joy Hartman and Rhea Robin Hartman,
by their next friend, Janet Hartman
No. 93-153

Dear Mr. Rosenberg:

The Court today entered the following order in the above-entitled case:

"The application for stay addressed to Justice Scalia and referred to the Court is denied."

Very truly yours,

WILLIAM K. SUTER, Clerk

By /s/ Christopher W. Vasil
Christopher W. Vasil
Deputy Clerk

cc: Thomas McCann
Clerk, Supreme Court of Iowa

**IN THE SUPREME COURT OF IOWA**

No. 90-1553

Polk County No. CE 32-18839

ORDER

LILLITH JOY HARTMAN and
RHEA ROBIN HARTMAN, Minors,
by their Next Friend, JANET HARTMAN,

Petitioner,

vs. (Filed NOV 13 1990)

CONSTANTINE STASSIS,

Respondent.

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The court has before it respondent's application for interlocutory appeal, and the resistance filed by the petitioner.

After considering the papers filed, including the excellent briefs submitted by both parties, the court finds the application should be denied, without prejudice to respondent's right to raise the interesting issue of gender-based equal protection violation on direct appeal in the event of an adverse final decree.

It is therefore ORDERED that respondent's application for interlocutory appeal shall be and is hereby denied.

Dated this 13th day of November, 1990.

/s/ W.W. Reynoldson
W.W. Reynoldson, Senior Judge

Copies to:

✓ Thomas J. McCann
218 Sixth Ave., Suite 300
P.O. Box 9130
Des Moines, IA 50306-9130

✓ David L. Wornson
1010 Insurance Exchange Bldg.
505 Fifth Ave.
Des Moines, IA 50309

✓ Clerk of District Court
Polk County Courthouse
Fifth & Mulberry Streets
Des Moines, IA 50309

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

| | | |
|---|---|---|
| LILLITH JOY HARTMAN, RHEA ROBIN HARTMAN, Minors, by their Next Friend, JANET HARTMAN, Petitioners, vs. CONSTANTINE STASSIS, Respondent. | ) | CE-32-18849 (Filed JUL 31 91) |

## FINDINGS, CONCLUSIONS AND DECREE

This is an action in equity to establish paternity and support under Iowa Code chapter 252A. The petitioners are the two minior [sic] children of Janet Hartman, who commenced the action on their behalf. The putative father, respondent Constantine Stassis, denies he is the father of either child.

The children and their mother are represented by attorney Thomas J. McCann, Des Moines, Iowa; the respondent by attorney Raymond Rosenberg, Des Moines, Iowa. The case was tried to the court commencing March 5, 1991 and was submitted March 7, 1991. The parties were requested to and have submitted proposed findings and conclusions and briefs.

The State of Iowa filed a petition to intervene on February 7, 1991 seeking to recover public assistance provided Janet Hartman since 1986. The respondent

resisted the intervention and the State was not allowed to intervene. However, the State is not precluded from proceeding later in this action or a separate action.

Before the trial commenced the respondent challenged admission of blood test evidence of paternity claiming the tests were not accurate and that the respondent should not have been required to submit without a preliminary finding of probable cause. This challenge was denied.

In this ruling the parties will be referred to by their first names for clarity and convenience.

## FACTS

1. Janet Hartman is a forty-year old caucasian female and the biological mother of the two children whose paternity is at issue here: Lillith Joy Hartman, born April 3, 1981, now ten years old and a causasian female; and Rhea Robin Hartman, born April 19, 1985, a six-year old caucasian female.

2. The respondent, Constantine Stassis, is a fifty-three year old caucasian male of Greek origin.

3. Janet and Constantine have never been married to one another. They first met in 1979 when Janet was employed as a typist in the physics department at Iowa State University in Ames, Iowa. Constantine was and is a physics professor at Iowa State. They commenced a sexual relationship in 1979. Constantine acknowledges intercourse a "few" times that year. This continued until May 1980 when Janet had a D and C following a miscarriage. On August 16, 1980 she saw Dr. Robert Doran for a

vaginal infection and he found she was pregnant. Janet told Dr. Doran she thought she conceived fifteen or twenty-two days after her last period which was June 28, 1980. The child, Lillith was born April 5, 1981. Dr. Doran stated the normal duration of pregnancy is forty weeks from the last period.

4. Responding to interrogatories Janet placed the intercourse with Constantine which resulted in conception in June 1980. At trial she modified this to June or July. Janet is adament [sic], however, that she only had intercourse once between the D and C in May and her visit to Dr. Doran in August and that was with Constantine. She recalls it as painful which, she claims, reinforces her recollection that intercourse only took place once during that time. Dr. Doran's notes show she reported three sexual partners at the August visit. Janet explained this to mean before and after the D and C; Constantine interprets this as during the possible conception period. Janet claims the other two were a man and a woman with whom she has maintained a homosexual relationship for many years. Janet admitted sexual intercourse with other men before May and after August 1980.

5. Constantine acknowledges having intercourse with Janet before May and after Lillith's birth, but not during the summer of 1980. He testified where he thought he had been during June and July 1980. Exhibit I is a list of his absences. He did not establish he was absent at all relevant times. He did establish that Iowa State's travel records prior to 1988 had been destroyed. Had Janet's paternity claim been asserted earlier those records would have been available.

6. Sometime after Lillith's birth, Janet and Constantine resumed an infrequent and irregular sexual liason [sic]. Janet assumed Constantine was aware he was the father of Lillith, but they did not discuss it directly. She claims he developed a "loving" relationship with Lillith, bought her gifts, told one of Janet's friends he was the father of both children, and discussed Lillith's educational future. She also claims Lillith called Constantine "daddy," which Constantine denies, and was not corrected. Several photographs of Constantine and Lillith are in the record which Janet feels demonstrate their close relationship.

7. Their relationship, sexual and social, continued into 1984. Janet claims she was not having sexual relations with any other man that summer. She told Constantine she was again pregnant. She claims he expressed surprise because she had been using birth control. She explained her loss of weight had made her diaphragm ineffective.

The relationship still continued after Rhea was born in April 1985. At Rhea's first birthday party, Janet claims Constantine remarked to a friend that both of his daughters were beautiful.

8. Constantine denied he had sex with Janet at the appropriate time in 1984. His exhibit K shows times he was absent from the state during that time. It does not rule out contact with Janet. He claims Janet did not tell him he was the father after she became pregnant.

9. Janet made no effort to establish Constantine's paternity until March 1989 when she had an attorney contact him. Janet explains her delay by claiming that she

wanted to preserve her tenuous relationship with Constantine and was fearful any paternity claim would end it. She said she was also concerned that such a claim would jeopardize his position at ISU. She now feels it is a point of honor that Constantine's paternity be established. Their relationship ended in 1986.

10. Janet acknowledges she has no documents which in any way tend to establish Constantine's paternity. He sent no cards or letters, nor did she. She did not indicate he was the father on any school or other applications.

11. Janet has been receiving ADC since 1981. In her application for benefits in 1981 and after Rhea's birth, she stated the father was unknown. She now claims she gave a fictitious explanation of that lack of knowledge each time. She admitted she knew the applications were false, that she intended the State to rely on the statements and that she received benefits. She explained her false applications by again claiming she was afraid an investigation or action by the State against Constantine would jeopardize her relationship with him and his with ISU.

12. After this action was commenced and over Constantine's objection, an order directing withdrawal and testing of blood samples from Constantine, Janet and both children was sought and obtained. The testing was done at the Iowa Methodist Medical Center in Des Moines, Iowa. Dr. Russell H. Mahoney, board certified in pathology, testified as to the withdrawal and testing procedures, as well as the test results. A combination of HLA, ABD, MNSs and Rh tests were utilized.

His conclusions are stated in exhibits 2 (Lillith) and 4 (Rhea). Summarizing, in both Lillith and Rhea's case Constantine was not excluded as the father. For Lillith the paternity index was 967.17285, that is, it is 967 times more likely that Constantine and Janet would produce a child with Lillith's blood characteristics than would Janet and a random man. By using an assumed prior probability of paternity of 50 percent, the probability of Constantine's paternity of Lillith is 99.896711 percent.

The paternity index in Rhea's case was 4,449.4956, or it is 4,449 times more likely that Rhea's blood-characteristics would result from a mating of Janet and Constantine than from a mating of Janet and a random man. Again using the same assumed prior probability, the probability of Constantine's paternity of Rhea is expressed as 99.977529 percent.

Constantine does not challenge the withdrawal or testing procedures used. He concedes the accuracy of the exclusionary results. That is, he acknowledges that the tests establish he is among a group that cannot be excluded as the father of Lillith or Rhea. However, he takes strong exception to the theory and calculations underlying the further determination of the probability that he is the father. He introduced expert testimony that the probability of paternity was based on mathmatically [sic] unsound principles.

13. Janet has recently graduated from Drake University and is looking for work. She has been an ADC receipient [sic] since 1981 and that is her only source of income at this time. Her total benefits are slightly over $700.00 per month.

14. Constantine's gross income at the time of trial was approximately $104,000 per year, or $8,666 monthly. This would result in a net income of approximately $5,200 per month.

15. Janet has had a lesbian relationship with another woman for many years, predating her relationship with Constantine. Constantine was aware of this. In 1981 Janet moved to Des Moines and established a household with this women. They purchased a house together. The children have been raised in that home. Constantine claims that this established family unit equitably precludes Janet from turning to the biological father, whoever that is, for support.

## CONCLUSIONS

I. The petitioners' burden of proof is to establish paternity by a preponderance of the evidence. *In Re Marriage of Schneckloth*, 320 N.W.2d 535,536 (Iowa 1982); *Moody v. Christiansen*, 306 N.W.2d 775,777 (Iowa 1981); *State ex rel. Wegman v. Schulz*, 417 N.W.2d 228,231 (Iowa Co.App.1987). Iowa Code chapter 252A embraces paternity determinations and the proceeding is in equity. *Wegman*, 417 N.W.2d at 229. Iowa Code §675.41 is a legislative determination that blood tests which "show a statistical probability of paternity" are relevant in this chapter 252A action. *State ex rel. Buechler v. Vinsand*, 318 N.W.2d 208,211 (Iowa 1982) (collecting articles and cases holding probability of paternity evidence admissable [sic]). That this is the rule in a substantial majority of jurisdictions, whether there is statutory authorization or not, is supported by the annotation, *Admissability* [sic], *Weight and Sufficiency*

*of Human Leukocyte Antigen (HLA) Tissue Typing Tests in Paternity Cases*, 37 ALR 4th 167 (1985). However, HLA tests are only evidence of paternity and are to be considered along with other available evidence in determining if paternity has been established. Iowa Code §675.41 (1991) (the tests "shall be weighed along with other evidence of the alleged father's paternity"); *Buechler*, 318 N.W.2d at 212.

II. In order for the blood tests in this case to have any probative value certain preliminary facts must be established. Dr. Mahoney listed these as (1) Janet is the biological mother, (2) Janet and Constantine had intercourse during the appropriate time period, (3) Constantine was not sterile, (4) none of those tested had blood transfusions within three months of the test date, and (5) no first degree relative is involved.

A discussion of these factors encompasses practically all of the non-serological evidence in this case. Each of these factors will be considered.

A. *Janet as the mother.* No contention is made that Janet is not the biological mother of both Lillith and Rhea. It is established that she is.

B. *Intercourse at appropriate time.* This is the principal non-serological factor which Constantine contests. It naturally involves the credibility of both parties, since there are, as usual in these cases, no witnesses and little evidence independent of the parties' recollections and testimony.

Janet testified with seeming certainty that she only had intercourse once, and that with Constantine, during

the possible conception period for Lillith. Detracting from her assertion is her confusion as to when conception took place – June or July – and her admitted promiscuity during 1980. There is less confusion as to when conception occurred and little evidence of intercourse with other men in Rhea's case.

In both cases Constantine attempted to establish he was out of the state during the appropriate periods. He was not successful, but this problem in accurately establishing his whereabouts may have been exacerbated by Janet's delay in commencing this action – eight years after Lillith's birth and four years after Rhea's.

That Janet is capable of deliberate falsehoods even when perjury may be involved has been established. She certified that the father was unknown in her applications for public assistance but has now testified she knew the father was Constantine. On the other hand, would she now risk a serious criminal prosecution by lying about Constantine's being the father of her children?

It is, however, inescapable that Constantine had a long term sexual relationship with Janet and that they were having intercourse in the general time periods involved for both children. When all of the evidnece [sic] bearing on intercouse [sic] at the appropriate times is considered it is more likely than not Constantine had intercourse with Janet during a period of time when conception of both Lillith and Rhea could have occurred. This, of course, is not a finding that she had intercourse only with Constantine during that time.

This conclusion is arrived at without considering the results of the blood testing. This is a preliminary determination which must be made before inclusive HLA testing can have any validity. *See, Kofford v. Flora,* 774 P.2d 1343,1352 (Utah 1987) ("The factfinder must also be informed with the greatest clarity possible that it must disregard the probability of paternity statistic if it finds that the putative father did not have sexual intercourse with the mother during the period of conception."); R. Peterson, *A Few Things You Should Know About Paternity Tests (But were Afraid to Ask),* 22 Santa Clara L.Rev.667, 685-86 (1982) (hereafter *Peterson*).

C. *Non-sterility.* Although there was no direct evidence of Constantine's ability to father children in 1980 and 1984, he did state he has a biological son. He did not claim sterility. Non-sterility has been established by a preponderance of the evidence.

D. *No transfusions within three months.* The applications for blood testing in the Methodist records show statements by or on behalf of each person tested that no one had received any blood transfusions within the applicable time.

E. *First degree relatives.* The evidence does not show any possibility that a first degree relative of Constantine is involved in any way.

III. The use of blood test evidence in paternity actions commenced in the 1930's. Initially they were based on the ABO blood typing system, but many additional systems are available now. All of them operate on

the principle that certain identifiable genetic characteristics are passed from parents to their children.[1] I. Ellman and D. Kaye, *Probabilities and Proof: Can HLA and Blood Group Testing Prove Paternity?*, 54 N.Y.U.L. Rev.1131,1135 (1979) (hereafter *Ellman and Kaye*).

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[1] "The general principles that form the basis for applying tests of genetic markers to cases of disputed parentage include the following:

1. One-half the genetic information in a child is maternal in origin and one-half is paternal in origin.

2. Only one man can be the biologic father of a child and a sperm containing one-half the genetic information present in this individual fertilized the ovum containing one-half the genetic information of the biologic mother.

3. The marker studied is established as a product of genes which obey Mendel's Laws of Inheritance so that:

a. a child cannot have a genetic marker that is absent in both parents;

b. a child must inherit one of a pair of markers from each parent;

c. a child cannot have a pair of identical genetic markers unless both parents have the marker:

d. a child must have a genetic marker if it is present as an identical pair in one parent.

4. The test method used must be reliable and reproducible and measure an inherited characteristic.

5. The genetic system must be polymorphic (marker frequency varies within the population) and the gene frequencies must be established by examination of an appropriate sample of the random population.

6. The genetic systems used in calculating inclusion and exclusion probabilities should aggregate independently (the finding of a marker in one system is not dependent on the presence or absence of a specific marker in another system)."

H. Polesky and S. Lentz, *Parentage Testing: An Interface Between Medicine and Law*, 60 N.D.L. Rev.727,731-32 (1984) (hereafter *Polesky and Lentz*) (footnote omitted).

In earlier days, genetic testing was accepted only to *exclude* paternity. That is, the tests could, with various degrees of certainty, inform that an accused was *not* the father, but could not tell if he *was* the father. As new tests were developed, the results came to be recognized as "conclusive or highly persuasive on the issue." *Schneckloth*, 320 N.W.2d at 538. A calculated probability of exclusion

> "[i]f used as evidence of paternity against a nonexcluded man, however, . . . can be misleading. The probability that a nonfather will be excluded by a set of tests is not the same as the probability that the nonexcluded man is the father. While it is true that the higher the probability of exclusion, the higher the probability that the nonexcluded man is the father, 'there is no direct relationship between the probability of exclusion and the likelihood of paternity. Likelihood of paternity cannot be extrapolated from the probability of exclusion.' Scientific literature documents the incorrectness of equating the probability of exclusion with the probability of paternity."

*Peterson*, 22 Santa Clara L.Rev. at 678 quoting from Stroud, Bundrant and Galindo, *Paternity Testing: A Current Approach*, Trial, Sept.1980 at 47 (1980).

With the use of these additional systems, and particularly with the advent of Human Leukocyte Antigen, or HLA, testing, combined with certain recognized mathematical principles, *inclusive* genetic testing gained recognition. With this, the probability that a nonexcluded man is the biological father can be calculated. "The sophisticated tests available today cannot prove paternity, but

can give an estimate that the nonexcluded tested man could be the father." *Polesky and Lentz,* 60 N.D.L.Rev. at 733. There is general agreement that inclusive testing, when properly conducted, is highly probative in the paternity determination process. *See Kofford,* 744 P.2d at 1348 (collecting authorities).

Dr. Mahoney testified to the meticulous safeguards used in the testing process for each of the individuals. There has been no challenge made to the conduct of the tests. After the test results are compiled, the various genetic markers are compared with those of a random man. This likelihood that a man with the genes of the putative father would contribute the required genes compared with a random man is known as the paternity index. See *Peterson,* 22 Santa Clara L.Rev. at 684. The paternity indexes for each of the four tests conducted in this case appear in exhibits 2 and 4. Because these are independent tests, a cumulative index is obtained by multiplying them. The cumulative paternity index in Lillith's case is 967.17285; in Rhea's it is 4,449.4956.

These indexes are quite high. *Peterson* reports the most frequent range is 19 to 100, and one test facility computed an average of 28. 22 Santa Clara L.Rev. at 683 and n.57. However, it is not uncommon to have an index in the hundreds and occasionally in the thousands. *Id* at 683. The 1976 AMA-ABA Joint Guidelines classify an index over 200 as "paternity practically proven." *Id* at 700.

After the paternity index is calculated, the next step involves an assumption which has generated Constantine's principal complaint concerning the probability of

paternity and Dr. Mahoney's resulting opinion of his paternity. Bayes Theorem is a formula for determining the extent newly discovered evidence will modify a prior probability. It requires an assumption of what the odds are that the accused is the father compared with the random man in order to arrive at a probability of paternity – the probability that a nonexcluded man is the father. Thus this calculation will only disclose how previously selected odds are modified in light of the blood test evidence; it cannot shed any light on what the prior odds are. *Id* at 684.

The generally assumed prior probability, and the one used in this case, is .50: a 50 percent chance that the respondent is the father as opposed to all other members of his group. Constantine's contention is that this is an erronious [sic] application of Bayes Theorem, theoretically and actually.

A part of respondent's complaint is that the formula will inevitably produce a high probability of paternity unless a prior probability of zero is used (in which case the probability of paternity is always zero). The commentators and authorities recognize this and require a high probability percentage before any weight is accorded. *See* id at 701. Many, if not most, require at least .95 before it has significance. *See Kofford*, 774 P2d at 1350-51 and n.11.

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[2] A sample calculation which illustrates the principle is found in *Ellman and Kaye* at 1149.

Constantine also takes issue with the European data base used. Dr. Mahoney's testimony was that it is recognized as valid and used by experts. No contrary evidence was presented.

Constantine further questions the use of a 50 percent prior probability. As discussed, this is an arbitrary assumption and has been criticized because, at the time it is used, it is completely unrelated to the actual evidence produced at trial. What if the trial evidence discloses five, or perhaps ten, other men had access to the mother at the appropriate time, or one otherman [sic] had access five or ten times more often? One authority suggests a "chart" approach whereby various prior probabilities and resulting probabilities of paternity would be graphically displayed. The factfinder could then utilize its independent determination of the prior probabilities and ascertain the appropriate paternity probability. *See Ellman and Kaye,* 54 N.Y.U.L.Rev. at 1152. Another commentator has devised a simple formula for utilizing varying prior probabilities. *Peterson,* 22 Santa Clara L.Rev. at 686-91. Using that formula, if we were to assume there were five other men who had access (as opposed to one assumed by Dr. Mahoney), or that one man had access five times more often, the probability in Lillith's case would be calculated: $\frac{967.17285}{967.17285+5} = \frac{967.17285}{972.17285}$ = 99.4856 percent, as opposed to the probability expressed by Dr. Mahoney of 99.8967 percent. If we were to assume ten other men, or ten times the access, the calculation would be: $\frac{967.17285}{967.17285+10} = \frac{967.17285}{977.17285}$ = 98.9766 percent.

In Rhea's case the difference, using the foregoing assumptions, from Dr. Mahoney's probability is even less. In the case of five men it is: $\frac{4449.4956}{4449.4956+5} = \frac{4449.4956}{4454.4956} =$ 99.8877 percent, as opposed to Dr. Mahoney's calculation of 99.9775 percent. For ten men, it is $\frac{4449.4956}{4459.4956} = 99.7757$ percent.

These results are consistent with Dr. Mahoney's testimony that when the paternity index is very high, as in these cases, then the prior probability has a relatively small influence on the probability of paternity. Most authorities agree that a paternity probability over 95 percent is quite probative. *Id* at 700 and n.90. The probabilities of paternity in these cases exceed 99 percent and, under any standard, are entitled to careful consideration.

IV. Utilizing all of the evidence presented, including the blood test results and expert testimony, the court finds the petitioners have succeeded in proving it is more likely than not Constantine Stassis is the father of Lillith Joy Hartman and Rhea Robin Hartman.

V. The equitable defense proposed by Constantine which would excuse his support obligation because Janet conceived these children "knowingly and intentionally . . . under deceptive circumstances which she has devised so that the father of the child be unknown or uncertain in order that the child can be raised in a homosexual household where the biological mother and her lesbian lover have established a family unit and assumed parenting roles both emotional and financial for the children," respondent's Summary of the Facts and Argument at

31-32, has a questionable factual foundation. More importantly, the respondent does not cite any authority for this proposition and the court is aware of none. Any support required here is for the children, not their mother; they are not to be charged with any claimed errant lifestyle or an intent attributable to Janet.

This is equally true of the argument that her receipt of ADC benefits works an estoppel on the father's support obligation. Furthermore, if the taxpayers have been wrongfully supporting this family, they are entitled reimbursed [sic] as provided by law.

VI. The defense of laches is troublesome. If benefits were being sought for Janet, her delay might well be inexcuseable [sic]. Subjectively, she may have had satisfactory reasons for the delay. Objectively, it is difficult to justify.

Laches as a defense to paternity actions is recognized in *Moody v. Christiansen*, 306 N.W.2d 775 (Iowa 1981). That case involved a six year delay. Here it is eight years and four years. Prejudice is required. *Id* at 777. Although Constantine claims he was prejudiced by missing records, this is far from certain. He did produce some records of his whereabouts. He did not attempt to show the absence of other records (other than Iowa State's) which would have shown where he was at critical times, if not in Iowa.

The claimed unavailability of other witnesses is of less concern in view of the high genetic probability of paternity. Further, there was no showing that one prime candidate, Dr. Robinson, was not available. Another possibility, Dr. Klem, did testify.

The respondent has not established the defense of laches.

VII. The findings of fact reflect the relative incomes of the parties. Since Constantine's net income of $5,200 per month substantially exceeds $3,000 per month, the appropriate figure is within the court's discretion, but not to be less than if his income were $3,000 per month.

Janet has no income except public assistance payments, which are exlcuded [sic] under the guidelines. However, she is qualified to work and has the capacity to do so. That she does not is her choice. She will be deemed to have an earning capacity equal to the public assistance she has been receiving, or approximately $701.00 per-month [sic]. The applicable percentage for two children is 32.2. The respondent will be required to pay $1,200 per month child support through the Polk County, Iowa Clerk of Court retroactive to July 21, 1989 and will be due on or before the 29th of each month henceforth until a child becomes eighteen (or graduates from high school), dies, marries or becomes self-supporting. When there is only one child, the support will be $950.00, to terminate as above. The court reserves jurisdiction to require educational support past the age of eighteen.

Constantine shall also provide health insurance for the two children, or reimburse Janet for such insurance. All uninsured health care expenses are to be paid equally by the parents.

VIII. No attorney fees are authorized in this case, *Gremillion ex rel Gremillion v. Erenberg*, 402 N.W.2d 410,413 (Iowa 1987), and none will be ordered.

The costs of this action are taxed to the respondent.

## SUMMARY

The respondent, Constantine Stassis, is found to be the biological father of Lillith Joy Hartman and Rhea Robin Hartman, minor children of Janet Hartman. Constantine Stassis is directed to pay child support to Janet Hartman for the children through the Polk County, Iowa Clerk of Court in the sum of $1,200 per month retroactive to July 21, 1989 and to be paid henceforth on or before the 27th of each month until a child is eighteen (or completes high school), dies, marries, or becomes self-supporting. When there is only one child the support will be $950.00 per month payable and terminable as above. Jurisdiction is retained to require additional support for education past the age of eighteen.

The respondent shall provide health insurance coverage for the children for which he is obligated to pay support, or reimburse the petitioner for such insurance, at his election. Uninsured health expenses are to be paid equally by the parents.

The respondent shall be entitled to claim both children as dependents for income tax purposes, if this is permissible despite the marital status, and, if permissible, the respondent shall execute and deliver the necessary authorizations to carry this out.

The respondent is to pay the court costs. No attorney fees are awarded.

It is so ordered on July 31, 1991.

/s/ James W. Brown
JAMES W. BROWN, JUDGE
FIFTH JUDICIAL
DISTRICT IOWA

Copy to:

R. Rosenberg
T. McCann
C. Hansen, Child Support Recovery Unit

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

| | |
|---|---|
| **LILLITH JOY HARTMAN** and **RHEA ROBIN HARTMAN,** Minors, by their Next Friend, JANET HARTMAN,<br><br>Petitioners,<br><br>v.<br><br>**CONSTANTINE STASSIS,**<br><br>Respondent. | Case No. CE 032-18849<br><br>**RULING ON JURY TRIAL REQUEST MATTER** |

Confusion exists in these proceedings as to whether or not the Respondent, Constantine Stassis, is entitled to a jury trial concerning the alleged paternity in these proceedings. Pursuant to an order dated August 2, 1990, counsel for the respective parties came before undersigned, argued and briefed this issue of entitlement to jury trial on September 5, 1990.

After giving due consideration to the arguments and the briefs and the applicable law, the Court is now prepared to rule on the pending issue.

Petitioner brought an action to establish paternity and support under Chapter 252A of the Iowa Code. This chapter is entitled the "Uniform Support of Dependants Law." Because matters under Chapter 252A are in equity, parties are not entitled to a jury trial.

Chapter 675 of the Iowa Code is entitled "Paternity of Children and Obligation for Support." An action brought

under this statute is in law and the parties are entitled to a jury trial under § 675.18.

Primarily at issue in this case is the claim of Respondent that his right to equal protection is violated based on gender if the putative father is denied a jury trial under Chapter 252A support and paternity action while he would be afforded a jury trial under a Chapter 675 paternity suit.

As indicated, the Respondent putative father's claim is that he is being denied equal protection *based on gender* because the mother, the Petitioner herein, is able to choose between two statutes to bring an action to establish paternity and support. By choosing Chapter 252A rather than 675, the Petitioner effectively "blocks" the Respondent from demanding a jury trial.

In *Grandon v. Ellingson*, 259 Iowa 514, 518, 144 N.W.2d 898, 901 (1966), the Iowa Supreme Court held that "where an action is properly brought in equity the defendant has no right to a trial by jury of law issues presented in the answer and the Court will retain jurisdiction and determine the legal issues presented." The Court, citing further an earlier authority, stated additionally that "once equity has obtained jurisdiction of a controversy it will determine all questions material or necessary to accomplish full and complete justice between the parties, even though in doing so it may be required to pass upon some matters ordinarily cognizable at law." *Id.*

The specific issue arose as to whether a Respondent was entitled to a jury trial in a paternity and support action under Chapter 252A in *Greenstreet v. Clark*, 239 N.W.2d 143 (Iowa 1976). In that case the Iowa Supreme

Court held that the Respondent putative father was not entitled to a jury trial. *Id.* at 148; *see also In Re Marriage of Stogdill*, 428 N.W.2d 667, 670 (Iowa 1988) (Issue of paternity is material to the determination of child support, therefore, these issues should be tried together.)

In 1981 the Iowa Supreme Court specifically faced the question of whether it was a denial of equal protection when the putative father was not afforded a jury trial under 252A. *See State ex rel. Bishop v. Travis*, 306 N.W.2d 733 (Iowa 1981), *appeal dismissed, Travis v. Iowa ex rel. Bishop*, 454 U.S. 1026, 102 S.Ct. 560, 70 L.Ed.2d 470 (1981). The Respondent in that case, however, did not base his equal protection argument on gender. He argued instead that he was being denied equal protection based on his being a Respondent and, like all Respondents in a 252A action, was being denied equal protection.

The Iowa Supreme Court in *Travis* held that the Respondent was not denied equal protection. *Id.* at 734. Under a rational basis standard, the Court held that the State has a "legitimate interest in providing a nonjury proceeding in a Chapter 252A action." *Id.* at 735. That legitimate interest includes:

1. Recognizing that the gathering of information across state lines makes it procedurally difficult to present questions to a jury; and

2. The need for the public to have an efficient collection system to reimburse for public funds expended as those obligated to pay support move from one state to another. *Id.*

The Court in *Travis* stressed that the legitimate State interest was based on the problem of enforcement of interstate support obligations. It considered intrastate paternity and support actions to have that same problem. It stated that: "the theory of Chapter 252A is that needs should be met promptly for dependents – where they are – and should be enforced against those obligated – wherever they might be found." *Id.* at 736. The result in *Travis* was that under a rational basis test, a standard requiring a legitimate State interest, a Respondent is not entitled to a jury trial if an action is brought under Chapter 252A. Promptly meeting the needs of dependents was found to be a legitimate State interest irrespective of *where* the parties are located.

The Respondent in the instant case takes the *Travis* case one step further. He asserts that he is being denied equal protection based on gender. He bases his contention on the fact that § 252A.3(9) specifically differentiates between the sexes. That section states the following:

> 9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the natural father shall not be enforceable unless the natural father has been adjudicated to be the child's father by a court of competent jurisdiction, or the natural father has acknowledged paternity of the child in open court or by written statement.["]

The legislature was surely aware when it formulated § 252A.3(9) that it is the father who, the vast majority of the time, denies paternity. Surely the legislature's intent in § 252A.3(9) was to recognize this problem and attempt to institute legislation to resolve it.

The question, however, still comes back to equal protection. Regardless of the legislative intent concerning § 252A.3(9), if the "effect" of the statute is such that it contains a gender bias, the Court needs to consider carefully the extent of the State's interest in such legislation. If it is merely a "legitimate governmental interest" as in *Travis*, then the statute is void. If, however, the statute rises to the intermediate standard of having a "substantial governmental interest," it will overcome the Respondent's equal protection argument.

In *Travis* the facts were identical to the instant case. Both the Petitioner and the Respondent were located in Iowa. The Iowa Supreme Court, however, only briefly addressed why the same rationale for not affording a jury trial in an interstate proceeding under Chapter 252A holds true for intrastate proceedings under that chapter as well. The court stated:

> Of course this proceeding, like many brought under Chapter 252A, is not interstate. Iowa could have elected to enforce support under the old chapter, thus according Respondent a right to a jury. But we think the legislature had a right to provide a nonjury system available for both interstate and intrastate actions. The theory of Chapter 252A is that needs should be met promptly for dependents – where they are – and should be enforced against those obligated – wherever they might be found.

*Travis* at 736.

In *Reed v. Reed*, 404 U.S. 71 (1971), the United States Supreme Court addressed the issue of equal protection based on gender. It used the "heightened scrutiny" and

"substantial relation" standard in its analysis. *Id.* at 76. The Court recognized that there was some legitimacy in an Idaho statute's objective which was supposed to reduce the workload on probate courts. That objective, however, did not hold up under the equal protection clause. The Court stated that giving a "preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment."

If, in the instant case, what the legislature is trying to accomplish is prompt support for dependents by denying a putative father a jury trial, the Court must ask itself whether the State has a substantial interest in this goal and whether the goal is actually attained through the legislation.

In *Travis*, Justice McCormick, in his dissenting opinion joined by Justice Allbee, found inconsistencies with the majority's finding that there is a legitimate State interest in denying a jury trial under 252A. *Travis* at 736. He argued that there was no ground for the differences between the legislature's objectives under either 675 or 252A to be manifested in granting a jury trial under one statute while denying it under the other. *Id.*

Even in the majority opinion in *Travis*, the Court noted the differences in the two chapters were, first, that Chapter 675 does not effectively reach across state lines; second, that Chapter 675 obligates support from only mothers and fathers while 252A obligates others, such as spouses, grandparents and grandchildren. *Travis* at 735.

Neither of these is a problem in cases such as the one at bar involving a Respondent who resides in Iowa and is reputed to be the natural father.

When the effect of a statute is that it denies a man the right to a jury trial, the Court must subject the statute to a heightened scrutiny and decide whether the statute represents a substantial State interest.

The Iowa Supreme Court found a "legitimate" State interest in denying a Respondent a jury trial in *Travis*. The Court stated that the legislation is representative of a legitimate State interest, namely, that support matters be enforced promptly; this is a legitimate interest irrespective of where a payor or dependent might be found. This includes parties who are *all* located in Iowa.

This Court has to decide whether the supposed goal of promptness is worth denying putative fathers a jury trial under Chapter 252A when he too is located in Iowa. The Court should keep in mind that under the exact same set of facts the legislature has not taken away the right to a jury trial under Chapter 675. It could be argued that the denial under Chapter 252A is arbitrary.

While it might be easier for this Court in its own philosophy and understanding of constitutional guarantees to follow the position and teachings of the minority opinion in *Travis, supra,* the Court considers that it is legitimately compelled under most circumstances to follow majority opinions of the Iowa Supreme Court. While it is true that this exact same question has not been decided by the Iowa Supreme Court, although *Travis, supra,* is about as close as one can get to the same factual situation and same issues raised on appeal, this Court

considers that the teaching of *Travis* and the holdings therein are so compelling and so controlling that this Court has no choice but to follow the teaching of *Travis, supra,* and to hold as it did that even when all parties are located in Iowa there is still a "substantial" State interest in denying a Respondent a jury trial in a proceeding held under and pursuant to Chapter 252A of the Code. Further, in this respect this Court determines and finds that it is not a denial of constitutionally guaranteed equal protection to the Respondent to deny him a jury trial under the facts and circumstances and record herein.

On the basis of the foregoing therefore, this Court determines and rules that the Respondent, Constantine Stassis, is not entitled to a jury trial in these proceedings. Counsel for respective parties are to contact the trial assignment clerk, obtain a nonjury trial date for these proceedings and, to the extent necessary, complete the discovery so that this matter may come on for prompt trial under those procedures.

Dated this 27th day of September, 1990.

/s/ A.M. Critelli
A.M. CRITELLI
JUDGE, FIFTH
JUDICIAL DISTRICT

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# CHAPTER 675

# PATERNITY OF CHILDREN AND OBLIGATION FOR SUPPORT

See also chapter 252A

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**675.1 Obligation of parents.**

The parents of a child born out of wedlock and not legitimized (in this chapter referred to as "the child") owe the child necessary maintenance, education, and support. They are also liable for the child's funeral expenses. The father is also liable to pay the expense of the mother's pregnancy and confinement. The obligation of the parent to support the child under the laws for the support of poor relatives applies to children born out of wedlock.

[C27, 31, 35, §12667-a1; C39, §**12667.01**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.1]

Analogous provision. §252.2

* * *

**675.8 Who may institute proceedings.**

The proceedings may be brought by the mother, or other interested person, or if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child acting through its guardian or next friend.

[C51, §848; R60, §1416; C73, §4715; C97, §5629; C24, §12658; C27, 31, 35, §12667-a8; C39, §**12667.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.8]

**675.9 Time of instituting proceedings.**

The proceedings may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child.

[C27, 31, 35, §12667-a9; C39, §**12667.09**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.9]

* * *

**675.11 Nonresident complainant.**

It is not a bar to the jurisdiction of the court, that the complaining mother or child resides in another state.

[C27, 31, 35, §12667-a11; C39, §**12667.11**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.11]

* * *

**675.18 Method of trial.**

The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases.

[C51, §851, 854; R60, §1419, 1422; C73, §4720; C97, §5634; C24, §12663; C27, 31, 35, §12667-a27; C39, §**12667.18**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §675.18]

* * *

**675.33 Limitations of actions.**

1. An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.8.

2. Notwithstanding subsection 1, an action to establish paternity and support under this chapter may be brought concerning a person who was under age eighteen on August 16, 1984, regardless of whether any prior action was dismissed because a statute of limitations of less than eighteen years was then in effect. Such an action may be brought within the time limitations set forth in section 614.8, or until July 2, 1992, whichever is later.

90 Acts, ch 1224, §50

NEW section

* * *

CHAPTER 252A

**252A.1 Title and purpose.**

This chapter may be cited and referred to as the "Uniform Support of Dependents Law."

The purpose of this uniform chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.1]

* * *

**252A.3 Spouse liable for support.**

For the purpose of this chapter:

1. A spouse in one state is hereby declared to be liable for the support of the spouse and any child or children under eighteen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

2. A parent in one state is hereby declared to be liable for the support of the parent's child or children under eighteen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever the other parent of such child or children is dead, or cannot be found, or is incapable of supporting the child or children, and, if the liable parent is possessed of sufficient means or able to earn the means. The court having jurisdiction of the respondent in a proceeding instituted under this chapter shall establish the respondent's monthly support payment and the amount of the support debt accrued and accruing pursuant to section 598.21, subsection 4.

3. The parents in one state are hereby declared to be severally liable for the support of a dependent child eighteen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to

maintain the child's self and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as the person's spouse by a person by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from the respondent's spouse or a decree dissolving the marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any state where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the natural father shall not be enforceable unless the natural father has been adjudicated to be the child's father by a court of competent jurisdiction, or the natural father has acknowledged paternity of the child in open court or by written statement.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §252A.3]

89 Acts, ch 166, §2

Spousal support debt for medical assistance to institutionalized spouse, ch 249B

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